THE HONOURABLE SRI JUSTICE T.CH. SURYA RAO

AND

THE HONOURABLE SRI JUSTICE G. CHANDRAIAH

W.P. No.9632 of 1999

ORDER: (Per Hon'ble Sri Justice T.Ch.Surya Rao)

The petitioner seeks a writ of *Certiorari* to quash judgment dated 25-11-1998 passed by the learned Special Court under the A.P. Land Grabbing (Prohibition) Act, 1982 (for short 'the Act') in L.G.A. No.72 of 1997. L.G.A. No.72 of 1997 was preferred before the Special Court assailing the order passed by the Special Tribunal dated 31-10-1997 in L.G.O.P. No.2 of 1990. The 3rd respondent herein filed an application before the Special Tribunal in L.G.O.P. No.2 of 1990 against the writ petitioner seeking a direction to evict him from the land covered by the schedule appended thereto. Eventually, after conducting enquiry, the learned Special Tribunal allowed the application and directed the writ petitioner to vacate the land and deliver the site to the 3rd respondent in its original position within two months from the date of that order. The writ petitioner filed an appeal before the Special Court having been aggrieved by the said order. The appellate Court while confirming the findings of the Special Tribunal dismissed the appeal. The writ petitioner is now assailing the said concurrent findings.

It is expedient to array the parties as they are originally arrayed to avoid any confusion.

The petitioner filed the application on the premise that while

he was working as Accountant in Forest Department from 1967 to 1971, he was granted a patta in respect of a house site by the Tahsildar Nellore vide proceedings dated
30-05-1970 in Rc.A.No.E1/1345/1969, after having collected a sum of Rs.100/- towards the value of that land and a sum of Rs.25/- towards the N.G.O's home and an amount of Rs.6/- towards demarcation charges. A Surveyor put the petitioner in possession of the site. Thereupon, he put up a thatched house in the said plot and residing up to 1971.

He and his family used to reside in the said thatched house by paying taxes to the Municipality and also the betterment charges of Rs.560/-. In or about in the year 1985, the said thatched house became dilapidated and fell down.

The petitioner, therefore, put up a barbed wire fencing and was in possession of the site. For some time after, reading the news item about grant of bogus pattas, when the petitioner went to Nellore so as to verify, he found that the barbed wire fencing on the Southern side was removed and two small thatched sheds were put up by the respondent in the suit plot and the respondent was therefore land grabber.

The claim of the respondent seems to be that the Tahsildar, Nellore granted a patta in his favour for petition schedule land in the year 1985, and since then he has been in peaceful possession and enjoyment of the same by constructing two thatched houses over the said land and has been residing with his family and that he was not a land grabber. It was his other plea that the petitioner was granted patta in respect of a different site situate in Yamalasetty Bavi area but not in Kondayapalem. On the above

pleadings,

the learned Special Tribunal framed the following issues.

"1. Whether the petitioner has title to the petition schedule property?

2. Whether the respondent has title to the petition schedule property?

3. Whether the respondent grabbed the petition schedule property?

4. Whether the petitioner is entitled to the possession of the petition schedule property?

5. Whether the petitioner is entitled to compensation at the rate of Rs.500/- per month from January 1986 till delivery of possession?

6. Whether the respondent is liable to be convicted under the provisions of A.P. Land Grabbing (Prohibition) Act 1982?

7. To what relief?"

At the time of enquiry, five witnesses were examined on the side of the petitioner and Exs.A-1 to A-10 were got marked. Three witnesses were examined on the side of the respondent and documents B-1 to B-11 were got marked.

Analyzing the evidence on record, both oral and documentary, the Special Tribunal was of the view that the petitioner was granted a patta and he lived therein along with his family till 1985 and that the respondent grabbed the land. The appellate Court concurred with the said findings.

In the instant writ petition, the learned counsel appearing for the writ petitioner, who is the respondent, represents that it is not

squarely a case which could be taken cognizance by the Special Court or the Special Tribunal inasmuch as, the writ petitioner cannot be called as a land grabber. Per contra, learned counsel appearing for the respondent-petitioner seeks to contend that since the respondent is not lawfully entitled to hold the land, it is a fair case of grabbing the land.

The short point that falls for determination in the instant writ petition is whether the respondent is a land grabber or not.

Certain facts, which are not in dispute, which elucidate facts in dispute, may be set forth. The petitioner was initially granted a patta by the Tahsildar, Nellore in Ex.A-1 dated
30-05-1970. He paid the necessary amount under the challan dated 03-07-1984 under Ex.A-2 to the Nellore Municipality. The respondent was also granted a patta by the Tahsildar, Nellore under Ex.B-1. He too paid house taxes to the Municipality under Exs.B-2 to B-10. The respondent has been in possession since 1985. Earlier thereto, obviously the petitioner had been in possession of the property, for some time, that is for nearly a decade and half. These facts are clearly emanating from the record. The entry of the respondent over the land in dispute is undoubtedly pursuant to Ex.B-1-patta granted in his favour by the Tahsildar.
It may be mentioned here that *mala fidies* have been attributed to the respondent and the then Tahsildar,
who granted patta in his favour. It appears, subsequently,
the respondent filed a suit in O.S. No.8 of 1986 on the file of
I Additional District Munsif, Nellore, against the petitioner and lost the same. The judgment and decree in the said suit were marked in

this case as Exs.A-5 and A-6. In the light of the above factual matrix, much depends upon the interpretation of the expressions 'land grabber' and 'land grabbing'.

The Act seeks to define both the expressions under clauses (d) and (e) of Section 2 of the Act, which are as under.

> "(d) *"land grabber"* means a person or a group of persons who commits land grabbing and includes any person who gives financial aid to any person for taking illegal possession of lands or for construction of unauthorized structures thereon, or who collects or attempts to collect from any occupiers of such lands rent, compensation and other charges by criminal intimidation, or who abets the doing of any of the above mentioned acts ; and also includes the successors in interest ;
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> (e) *"land grabbing"* means every activity of grabbing of any land (whether belonging to the Government, a local authority, a religious or charitable institution or endowment, including a wakf, or any other private person) by a person or group of persons, without any lawful entitlement and with a view to illegally taking possession of such lands, or enter into or create illegal tenancies or lease and licences agreements or any other illegal agreements in respect of such lands, or to construct unauthorized structures thereon for sale or hire, or give such lands to any person on rental or lease and licence basis for construction, or use and occupation, of unauthorized structures ; and the term "to grab land" shall be construed accordingly ;"

These expressions have been considered by the Apex Court on more than one occasion. In ***KONDA LAKSHMANA BAPUJI v. GOVT. OF A.P. AND OTHERS***[1] it was held in para 45 thus:

> "In regard to the ingredients of the expression "land grabber", it is necessary to point out that it is only when a person has lawful entitlement to the land alleged to be grabbed that he cannot be brought within the mischief of the said expression. A mere prima facie bona fide claim to the land alleged to be grabbed by such a person cannot avert being roped in within the ambit of the expression "land grabber". What is germane is lawful entitlement to and not a mere prima facie bona fide claim to the land alleged to be grabbed."

In ***GOUNI SATYA REDDY v. GOVT. OF A.P. AND OTHERS***[2] in para 10, the Apex Court held thus:

> "From a reading of the definitions of the phrases "land grabber" and "land grabbing" it is clear that the grabbing of any land must be without any lawful entitlement and with a view to take possession of such lands illegally. That is to say, the land grabber must be aware of the fact that he is entering into the possession illegally and without any lawful entitlement.
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> If such elements as indicated above are missing in our view, it would not be a case of land grabbing."

Very recently, the Apex Court in ***N. SRINIVAS RAO v. SPECIAL COURT UNDER THE A.P. LAND GRABBING (PROHIBITION) ACT AND OTHERS***[3] in para 46 held thus:

> "We agree with both Mr. Venugopal and Mr. Nariman that in order to constitute an act of land grabbing, an attempt to dispossess must be followed by actual dispossession which would then constitute land grabbing so as to attract the penal provisions of the 1982 Act."

Again *inter alia* in para 47, the Apex Court on the point of jurisdiction held thus:

> "The Special Court has no jurisdiction to decide questions relating to acquisition of title by adverse possession in a proceeding under the Act as the same would fall within the domain of the civil courts."

The decision of the Apex Court referred to above appeared to be divergent. In this context, it is expedient to refer the relevant provisions in the Act so as to understand the plain meaning thereof with reference to the statement of objects and reasons given at the threshold of the Act.

A combined reading of clauses (d) and (e) of Section 2 of the Act would show that every activity of land grabbing without any lawful entitlement to the land and with a view to illegally taking possession of such lands by entering into or creating illegal transactions as enumerated *inter alia* in clause (e) shall be construed as an act of land grabbing. The statement of objects and reasons shows that inasmuch as, there have been organized

claims on the part of the lawless persons operating individually and in groups, to grab, either by force or by deceit or otherwise, lands belonging to the Government,
local authority, religious or charitable institution or endowment, including a wakf, or any other private persons and they are known as land grabbers. The Act applies as seen from Section 1 to the land situated within the limits of urban agglomeration and to any other lands situated in such areas notified by the Government having due regard to the urbanisable nature of the land, or the usefulness or potential usefulness of such land for commercial, industrial, pisiculture or praunculture purposes. It is obvious that the Act applies not to all the lands situated anywhere in the State but it applies to the lands in certain areas only. When we consider the statement of objects and reasons, the Act seeks to curb the activity of land grabbing by taking possession of the land forcibly or by deceit or otherwise belonging to the Government, local authority, religious and charitable institutions including wakf and other private persons. The Special Tribunal and the Special Court are constituted to adjudicate the disputes by giving exclusive jurisdiction to those institutions, which oust the jurisdiction of the Municipal Courts. The predominant factor that emerges from the discussion is that there must be an act of land grabbing which alone confers the jurisdiction upon the Special Tribunal or the Special Court, as the case may be,
de hors the same, any dispute over a land must
necessarily fall within the competence of a Civil Court.
The Special Court, as can be seen from Section 8 of the Act,
is competent to determine the question of title and ownership to, or lawful possession of, any land derived under the Act. However,

the view expressed by the Apex Court seems to be that complicated questions of title by means of prescription by adverse possession always falls within the domain of the
Civil Court and the Special Court is not competent to adjudicate the same. When there is an act of land grabbing in respect of a land to which the Act applies and when the Special Tribunal is competent to determine the question as regards to ownership and title to, or lawful possession,
the disputed questions over the land can validly be adjudicated by this Forum under the Act. However, to attract the provisions of the Act, obviously there shall be an act of 'land grabbing', which means taking possession of land illegally or forcibly without any lawful entitlement thereto and with an intention to do the acts enumerated in the Act in the Section *inter alia*. Here in the instant case, the petitioner was granted patta in the first instance and when that patta has been in vogue, the respondent was given patta surreptitiously and respondent entered into the land pursuant to that patta.
The validity of the second patta is the question to be determined. Secondly, whether the entry of the respondent over the land can be considered as an act of land grabbing or not is the question. On the first point, both the Tribunals are concurrent that the petitioner had the valid patta in his favour but both the Fora failed to consider whether the respondent committed an act of land grabbing or not.

Much arguments have been addressed on this point. The learned counsel for the respondent-petitioner seeks to contend that when the writ petitioner has no lawful entitlement to the land

and had obtained a patta surreptitiously, it was obvious that with a *mala fide* intention he has entered into the land, and therefore, that could be construed an act of land grabbing. As a matter of that every person who occupies the land, which he knows
pretty well that he is not entitled to, since it belongs to somebody else can be called an encroacher of that land.

All encroachers cannot be brought within the purview of the Act, since the Act seeks to curb the activity of grabbing land in specified cases, which is the object behind the Act.

The jurisdiction of the Special Court or the Special Tribunal, as the case may be, is limited and such jurisdiction attracts only when an act of land grabbing has been committed. Whenever there is an occupation of a land belonging to a different person, *per se* it cannot obviously called as an act of land grabbing. Such an occupation coupled with other limitations which are emanating from the provisions under the Act coupled with objects and reasons alone can be considered as an act of land grabbing.

Having regard to the three essential ingredients which are emanating from the definition as given under clause (e) of Section 2, we are of the considered view that at the dispute in the instant case,
will not squarely fall within the definition of an act of land grabbing. It is not an organized attempt to grab the land of somebody else, therefore it must be a dispute, which squarely falls within the domain of Civil Court but not Special Tribunal or the Special Court, as the case may be, under the Act.

For the above reasons, we are of the considered view that the concurrent findings rendered by the Special Tribunal as well as

the Special Court are without jurisdiction.

The parties are not remediless. They can always seek the remedy on the principle of *ubi jus ibi idem remedium* by approaching any competent Civil Court.

In the result, the Writ Petition is allowed but under the circumstances no separate order as to costs.

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T.CH.SURYA RAO, J

Date: 06-07-2006

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G. CHANDRAIAH, J

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[1] (2002) 3 Supreme Court Cases 258

[2] (2004) 7 Supreme court Cases 398

[3] (2006)4 Supreme Court Cases 214